

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED BY THURSTON COUNTY TO
MICHAEL N. SIRCOVICH,

DEPARTMENT OF ECOLOGY, STATE OF
WASHINGTON and SLADE GORTON,
ATTORNEY, GENERAL,

Appellants,

v.

MICHAEL N. SIRCOVICH and
THURSTON COUNTY,

Respondents.

SHB No. 80-43

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a substantial development permit by Thurston County, came before the Shorelines Hearings Board, Nat Washington, Chairman, Marianne Craft Norton, Steve Tilley, Rodney Kerslake and David Akana (presiding), at a hearing in Lacey on January 15, 1981.

Appellants were represented by Jeffrey D. Goltz, Assistant Attorney General; respondent was represented by his attorney, Ernest

1 L. Meyer. Thurston County did not participate as a party. Court
2 reporter Lloyd Holloway recorded the proceeding.

3 Having heard the testimony, having examined the exhibits, and
4 having considered the contentions of the parties, the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent Michael Sircovich (hereafter "respondent") purchased a
8 piece of property located on Eld Inlet near the confluence of Perry
9 Creek, and northeasterly of State Highway Route 101 and Madrona Beach
10 Frontage Road on 7th Avenue NW in Thurston county. Respondent
11 purchased the property for \$2,024 from the State of Washington,
12 Transportation Commission on October 7, 1977, and received a quitclaim
13 deed for it.

14 II

15 The property is irregular in shape with 125 feet of waterfront and
16 side property lines extending into the waters of Mud Bay about 225
17 feet on the northwestern boundary and about 180 feet on the
18 northeastern boundary according to respondent's dimensions. The
19 fairly level lot has virtually no usable ground for construction of a
20 single-family home or septic system.

21 III

22 The proposed substantial development is for the placement of about
23 5000 cubic yards of fill and riprap on the lot to create a 100 foot by
24 about 125 foot, 0.3 acre building site. The fill would raise the
25 elevation of the site from less than 15.7 feet to about 24 feet. The
26 remainder of the property would be left as it is.

1 IV

2 Mean high water (MHW) is located at 13.5 feet elevation; mean
3 higher high water (MHHW) is located at 14.4 feet elevation. During
4 periods of higher tides which occur yearly, waters of Mud Bay inundate
5 the flat site as it occurred on the day of the hearing.

6 V

7 A substantial amount of fill is required for the septic system
8 even if no house were to be constructed on the fill. Additionally,
9 fill not actually used in the septic system, i.e., the compacted fill,
10 is necessary to safeguard the septic system. Consequently, the
11 proposed house is located on a fill, most or all of which is necessary
12 for the construction and preservation of a septic system. The fill is
13 for the sole purpose of providing sufficient land for the septic
14 system and only incidentally would support a house. A lesser amount
15 of fill would be necessary to build the structure of a house, without
16 a septic system, which conforms with setback requirements, but that is
17 not the purpose of the instant proposed development.

18 VI

19 The proposed septic system design was submitted by appellant to
20 the appropriate local health authority and approved with conditions.
21 The state regulations, which set minimum standards, appear to conflict
22 with the design according to the manager for the State Division of
23 Health, Department of Social and Health Services. There apparently is
24 some room for exercise of professional judgment, however, and the
25 local authorities give the actual approval of a design.

VII

The property, including the building site, is a salt water marsh which is a source of nutrients to the bottom of the food chain. It also serves as an intertidal habitat for fish and wildlife. The filling of 0.3 acres of the property would have a significant impact on the filled area but would have an insignificant impact overall to the natural system in the area. It was not shown that a reduction of the water quality would occur as a result of construction of the proposed development.

VIII

The approved and adopted Thurston County Shoreline Master Program (TCSMP) locates the proposed development in a rural environment designation. In such designation, landfill placed for the "sole purpose" of providing land to ensure required distances for septic tank drainfields is prohibited. TCSMP, page 57, paragraph 6. Sewage disposal facilities for residential development must meet appropriate state and local health regulations. TCSMP, page 60, paragraph 3. Residential development over water is not permitted. TCSMP, page 60, paragraph 1.

Policies for landfilling provide that fills should be designed and located so that significant damage to existing ecological values or natural resources will not occur. TCSMP, page 21, paragraph 1. Fills for water-dependent uses are to be given priority. TCSMP, page 22, paragraph 4. The size of landfills is to be limited by considerations of several factors, including reduction of water quality and

1 destruction of habitat. TCSMP, page 22, paragraph 5. The above
2 policies are used when interpreting regulations, or when particular
3 activities are not specifically covered by the regulations. TCSMP,
4 page 8.

5 IX

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings, the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 A shoreline substantial development permit is tested for
12 consistency with the approved master program and the provisions of the
13 Shorelines Management Act. RCW 90.58.140(2)(b). In any review of
14 such permit, the appellants have the burden of proof. RCW
15 90.58.140(7).

16 II

17 Landfills in a rural environment are not expressly prohibited as
18 they are in a conservancy environment. See TCSMP page 47, paragraph
19 1. Therefore, it appears that landfills may be allowable provided
20 that other TCSMP provisions, including policies, are met. One such
21 requirement is that such landfills will not be for the sole purpose of
22 providing sufficient land for septic tanks drainfields. Respondent's
23 proposed development is prohibited by this regulation (TCSMP, page 57,
24 paragraph 6). Because the proposed development is expressly
25 prohibited by a regulation, further interpretation is not necessary in

6 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 this instance. Also, while there is some question about meeting
2 appropriate state and local health regulations, we need not make
3 express conclusions thereon in addition to our findings since the fill
4 may not be placed on the site for the proposed septic system purposes.

5 III

6 . The proposed substantial development is inconsistent with the
7 provisions of chapter 90.58 RCW. With respect to adverse effects to
8 public health, the land and its vegetation and wildlife, and the
9 waters of the state and their aquatic life, we note that landfill is
10 not expressly prohibited by the SMA. Rather, uncoordinated and
11 piecemeal development is prohibited to prevent inherent harm
12 associated with such development. The TCSMP has provided for
13 coordinated development on the shoreline of the county. Therein,
14 landfill in a rural environment designation intended for sufficient
15 land area for septic systems is prohibited. Ignoring this regulation
16 would be tantamount to ignoring the TCSMP and promoting uncoordinated
17 and piecemeal development of the shorelines.

18 IV

19 The action should be reversed and permit vacated.

20 V

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

23 From these Conclusions, the Board enters this
24
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ORDER

The action of Thurston County in issuing substantial development permit (SH-TCH-12-79) is reversed and the permit vacated.

DONE this 16th day of March, 1981. |

SHORELINES HEARINGS BOARD

W. W. Washington
W. W. WASHINGTON, Chairman

Steve Tilley
STEVE TILLEY, Member

David Akana
DAVID AKANA, Member

Rodney M. Kerslake
RODNEY M. KERSLAKE, Member

Marianne Craft Norton
MARIANNE CRAFT NORTON, Member